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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,176	06/20/2003	Stephen Almeida	21221/1-CIP-2	9689

21710 7590 05/04/2005

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EXAMINER	
FARAH, AHMED M	
ART UNIT	**PAPER NUMBER**
3739	

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/600,176	ALMEIDA, STEPHEN	
	Examiner	Art Unit	
	Ahmed M Farah	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *03/24/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3, 5, 6, 8, 10-13, and 15-19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 5-9, 11, and 13-15 of U.S. Patent No. 6,595,986 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are directed to

analogous apparatus and methods of use for treating dermatological conditions, the methods comprising the steps of: placing a hollow reflective light guide against a patient's skin; generating a light that has a specific wavelength output and intensity; and filtering the light before it reaches the patient's skin.

Claims 1-3, 5, 6, 8, 10-13, 15 and 16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,228,074 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are directed to analogous methods for treating dermatological conditions comprising the steps of: placing a hollow reflective light guide against a patient's skin; generating a light that has a specific wavelength output and intensity; and filtering the light before it reaches the patient's skin.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9, 14 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 recites the light output is generated at a "low level" pulse firing. The term *low level pulse firing* is not defined in the prior art and claim fails to clearly set the boundaries (firing rate) for a low level pulse firing.

Claim 19, recites the "energy source s able to deliver **low level** light." Again, the term *low level light* is not defined in the prior art and claim fails to clearly set the boundaries (intensity) for a low level light.

Claim 9 recites the limitation "the light guide cooling water" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 13 and 14 rejected under 35 U.S.C. 102(b) as being anticipated by Eckhouse U.S. Pat. No. 5,620,478.

Eckhouse discloses a method and apparatus for treating dermatological condition, the method comprising:

placing a hollow light reflector (**16**) over/against a skin section, thereby forming a seal to contain the light;

generating a light from a flashlamp (**14**) that has a specific wavelength output and intensity;

filtering the light through light filters (**18**) to eliminate unwanted segments of the light; and

illuminating the skin section by directing the light through the filters (see Figs. 1 and 2).

As to claim 13, Eckhouse teaches that the flashlamp emits energy in the 300 to 1000 nm wavelength range (Fig. 17 and Col. 5, lines 24-25). He further teaches that the treatment area is cooled prior to irradiation.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 4-12 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckhouse in view of Braunt et al. U.S. Pat. No. 5,425,754 and in view of Changaris U.S. Pat. No. 5,282,842.

Although Eckhouse, described above, discloses a method of cooling the skin, he does not particularly use water to provide the cooling. Moreover, although he uses a flashlamp to generate the treatment light, he does not use multiple flashlamps simultaneously.

However, Braunt et al. disclose an alternative apparatus and method for treating dermatological conditions by simultaneously irradiating the skin and cooling the treatment area with a water (**11**) cooling system.

Changaris discloses an alternative method and apparatus for treating dermatological condition by irradiating the skin with a light generated by multiple individual light flashlamps (**56**), which are fired simultaneously or consecutively (Fig. 3B and Col. 7, lines 16-23).

Therefore, it would have been obvious to one skilled in the art at the time of the applicant's invention to modify Eckhouse in view of Braunt et al. and use water as an alternative cooling method to Eckhouse's cooling gel. It would have been further obvious to one skilled in the art to use multiple flashlamps in order to provide a treatment light with multiple wavelengths so as to treat wide range of dermatological conditions. In regard to claim 14, it is a known in the art to make UV producing flashlamps from quartz.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon-Thur. 9:30 AM-7:30 PM, and 9:30 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M DVorak can be reached on (571) 272-4768. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ahmed M Farah
Primary Examiner
Art Unit 3739

May 2nd, 2005.